



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

**[MB Docket No. 12-106; FCC 17-41]**

**Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission revises its rules to allow noncommercial educational (NCE) broadcast stations to conduct limited on-air fundraising activities that interrupt regular programming for the benefit of third-party non-profit organizations. Permitting NCE stations to conduct third-party fundraising on a limited basis will serve the public interest by enabling NCE stations to support charities and other non-profit organizations in their fundraising efforts for worthy causes without undermining the noncommercial nature of NCE stations or their primary function of serving their communities of license through educational programming.

**DATES:** Effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], except for the amendments to §§ 73.503(e)(1), 73.621(f)(1), and 73.3527(e)(14), which contain new or modified information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) and will become effective after the Commission publishes a document in the Federal Register announcing such approval and the relevant effective date.

**FOR FURTHER INFORMATION CONTACT:** For additional information, contact Kathy Berthot, [Kathy.Berthot@fcc.gov](mailto:Kathy.Berthot@fcc.gov), Media Bureau, Policy Division, at (202) 418-7454. For

additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission, at (202) 418–2918, or via email [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Report and Order, FCC 17-41, adopted and released on April 20, 2017. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or calling the Commission’s Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Paperwork Reduction Act of 1995 Analysis: This document contains new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public and the OMB to comment on the information collection requirements contained in this document in a separate Federal Register Notice, as required by the Paperwork Reduction Act of 1995, Public Law 104-13, see 44 U.S.C. 3507. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Congressional Review Act: The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

## **Synopsis**

### **I. INTRODUCTION**

1. In this Report and Order, we revise our rules to allow NCE broadcast stations to conduct limited on-air fundraising activities that interrupt regular programming for the benefit of third-party non-profit organizations (hereafter, “third-party fundraising”). Relaxing our longstanding third-party fundraising restrictions will serve the public interest by enabling NCE stations to support charities and other non-profit organizations in their fundraising efforts for worthy causes. Third-party fundraising programs may also help to raise public awareness about important topics, such as poverty, health care, and humanitarian issues. We conclude that permitting NCE stations to conduct third-party fundraising on a limited basis will not undermine the noncommercial nature of NCE stations or their primary function of serving their communities of license through educational programming.

### **II. BACKGROUND**

2. Under Section 399B of the Communications Act, 47 U.S.C. 399B, NCE stations are prohibited from broadcasting “advertisements,” defined as any message or other programming material which is broadcast or otherwise transmitted in exchange for any remuneration, and which is intended—

- (1) to promote any service, facility, or product offered by any person who is engaged in such offering for profit;
- (2) to express the views of any person with respect to any matter of public importance or interest; or
- (3) to support or oppose any candidate for political office.

Further, pursuant to §§ 73.503(d) and 73.621(e) of the Commission's rules, an NCE station may not conduct fundraising activities that substantially alter or suspend regular programming and are designed to benefit any entity other than the station itself. "Regular programming" includes programming that "the public broadcaster ordinarily carries, but does not encompass those fundraising activities that suspend or alter their normal programming fare." The third-party fundraising restrictions reflect the concern that "educational stations are licensed to provide a noncommercial broadcast service, not to serve as a fund-raising operation for other entities by broadcasting material that is 'akin to regular advertising.'"

3. The Commission has granted waivers of §§ 73.503(d) and 73.621(e) in extraordinary circumstances. For example, in 1992, the former Mass Media Bureau granted a waiver of §§ 73.503(d) and 73.621(e) to the licensee of an NCE radio station and an NCE television station in West Palm Beach, Florida, following Hurricane Andrew. The stations proposed to broadcast a two-hour simulcast along with four area commercial television stations to raise funds and donations and provide information for the hurricane relief effort. The staff granted the waiver in recognition of the catastrophic events that had occurred, the stations' unique ability to serve the area affected by the disaster, and the limited length of the program. The Commission also has granted waivers to permit fundraising for other singular catastrophic events, such as Hurricanes Katrina and Sandy, the September 11, 2001 terrorist attacks, the January 2005 tsunami in Southeast Asia, and the January 2010 earthquake in Haiti. More recently, the Commission established informal procedures through which NCE licensees could request Commission approval to conduct fundraising to aid the Moore, Oklahoma area tornado relief efforts, noting that it has granted waivers of § 73.503(d) for "fundraising appeals to support relief efforts following disasters of particular uniqueness or magnitude" and that such waivers

“have been issued for a specific fundraising program or programs, or for sustained station appeals for periods which generally do not exceed several days.” In contrast, Commission staff has denied waiver requests where the proposed fundraising occurred annually to address ongoing needs and was not limited to a specific one-time problem.

4. In June 2011, a working group including Commission staff, scholars, and consultants released the INC Report, a comprehensive report on the state of the media landscape. The INC Report discussed both the need to empower citizens to ensure that broadcasters serve their communities in exchange for the use of public spectrum and the need to remove unnecessary burdens on broadcasters who aim to serve their communities. Citing comments from the National Religious Broadcasters (NRB), the INC Report recommended that the Commission consider affording noncommercial broadcasters more flexibility by allowing NCE stations that are not grantees of the Corporation for Public Broadcasting (CPB) to spend up to one percent of their annual airtime doing fundraising for charities and other third-party non-profit organizations. In order to be eligible for CPB funding, an NCE station would have to devote the substantial majority of its daily total programming hours broadcast on all of its channels to CPB-qualified programming, which is defined as “general audience programming that serves demonstrated community needs of an educational, informational and cultural nature.” The INC Report noted that “[i]n some cases having local charities on the air can be a useful way of informing residents about problems in their communities” and “can help [NCE] stations achieve their public service or religious missions.”

5. On April 25, 2012, in response to the recommendations in the INC Report, the Commission adopted a Notice of Proposed Rulemaking seeking comment on whether to allow NCE stations to conduct third-party fundraising. The Commission received 23 comments and

seven replies. NRB and all of the religious broadcasters that filed comments favor allowing NCE stations to conduct third-party fundraising. Commenters representing secular NCE broadcasters, including National Public Radio (NPR), Public Broadcasting Service and Association for Public Television Stations (PBS/APTS), and university and college NCE stations, oppose relaxation of the third-party fundraising restrictions.

### **III. DISCUSSION**

#### **A. Relaxation of Third-Party Fundraising Restrictions**

6. We relax the third-party fundraising restrictions to allow NCE stations to conduct limited on-air fundraising activities that interrupt regular programming for the benefit of third-party non-profit organizations. Such relief will provide NCE stations greater flexibility to undertake fundraising for third-party non-profit organizations. Under the current rules, program-length fundraising for third-party non-profit organizations is prohibited (even if regularly scheduled) because such programming is considered to suspend “regular programming.” Under the rules we adopt today, NCE stations will be able to conduct fundraising activities that alter or suspend regular programming – including program-length fundraising activities – at their discretion, as long as the fundraising programs do not exceed the one-percent cap discussed below. We conclude that providing NCE stations the flexibility to engage in limited fundraising for charities and other third-party non-profit organizations will benefit the public interest. Third-party fundraising programs may enhance the educational nature of NCE stations by educating the public about the social needs and charitable causes supported by non-profit organizations. For example, a fundraising program for a breast cancer charity could help to educate the station’s audience about early detection and support services, and a fundraising program for a child poverty relief organization could serve to educate the stations’ listeners about the needs of

children around the world who suffer in extreme poverty. Non-profit organizations may be better able to address their charitable missions with the financial support received from the NCE stations' audiences. Some of this financial support may directly benefit NCE stations' local communities. Third-party fundraising may also help to lessen the financial burden on governmental entities that address social needs through appropriations from public funds.

7. We further conclude that allowing NCE stations to conduct limited third-party fundraising will not undermine the noncommercial broadcasting service, as suggested by some commenters. The longstanding third-party fundraising restrictions reflect concerns that any promotional or fundraising activities by NCE stations must not adversely affect the educational programming mission or noncommercial character of these stations. Nevertheless, we conclude that a blanket prohibition on third-party fundraising that interrupts regular programming is no longer necessary to preserve NCE stations' noncommercial nature and ensure that NCE stations remain focused on their primary function of providing educational programming to their communities of license. The Commission's experience in granting waivers to allow NCE stations to conduct fundraising for disaster relief efforts has demonstrated that NCE stations can conduct limited third-party fundraising without compromising their noncommercial nature and the valuable program service they provide to the public. The public has responded enthusiastically to these disaster relief fundraising activities, and there is no evidence in the record before us that these fundraising activities have altered the public's perception of noncommercial broadcasting. Accordingly, we find that it is appropriate to allow NCE stations to conduct third-party fundraising on a limited basis.

8. We disagree with assertions that the success of the existing waiver process demonstrates that changes to the rules are unnecessary. As discussed above, we have determined

that the public interest will be served by relaxing our third-party fundraising restrictions to allow NCE stations to conduct limited third-party fundraising activities unrelated to relief efforts for singular catastrophic events. The waiver process is intended to provide relief in extraordinary circumstances, and is not suitable for the more routine third-party fundraising activities that we address in this proceeding. We likewise reject proposals that we expand the existing waiver process to allow NCE stations to seek waivers to conduct third-party fundraising activities that are not connected to specific disasters. We think that it would impose an unnecessary burden on both NCE licensees and Commission staff to require NCE licensees to seek waivers each time they want to conduct such routine third-party fundraising.

9. We are also not persuaded by arguments that relaxing the third-party fundraising restrictions will adversely affect the noncommercial broadcasting service by reducing the amount of airtime dedicated to educational, instructional, and cultural programming; lessening the appeal of NCE stations to their audiences; or jeopardizing fundraising for NCE stations' own operations. First and foremost, we emphasize that the choice to conduct third-party fundraising will be entirely voluntary on the part of NCE stations. NCE stations that do not wish to engage in third-party fundraising are not required to do so. Thus, NCE stations concerned that airing third-party fundraising programs will jeopardize fundraising for their own operations can simply choose not to engage in such third-party fundraising. Additionally, we have determined that third-party fundraising programs may enhance the educational nature of NCE stations in some situations by raising public awareness about social needs and charitable causes supported by non-profit organizations. Further, as we explain below, we are limiting the amount of time that NCE stations can spend on third-party fundraising that interrupts regular programming to one percent of their total annual airtime. We believe that the one-percent annual limit strikes the proper



balance between providing NCE stations some flexibility to support their fundraising missions and ensuring that their third-party fundraising activities do not take away from their primary function of providing noncommercial, educational programming to their local communities.

10. We disagree with assertions that third-party fundraising will change the public's perception of noncommercial broadcasting by causing the public to view the "business" of NCE stations as charitable fundraising, which could harm all NCE stations, even those that do not change their on-air practices. NCE stations that choose to engage in third-party fundraising will continue to spend the vast majority of their time—at least 99%, if not more—providing noncommercial, educational programming to their audiences. We do not believe that allowing NCE stations to allot up to one percent of their total annual airtime to third-party fundraising will significantly alter the public's perception of noncommercial broadcasting. Nor do we believe that third-party fundraising will weaken the public's confidence in the editorial independence of NCE stations or increase the potential for third-party organizations to influence programming decisions. As NRB points out, NCE stations are already permitted to air sponsorship and underwriting announcements from both non-profit groups and commercial businesses. Commenters have offered no evidence that such promotional announcements have eroded the public's confidence in the editorial independence of NCE stations.

11. Some commenters assert that relaxation of the third-party fundraising restrictions will subject NCE stations to undue pressure from affiliated or influential parties – such as universities, colleges, and other institutions that hold the stations' licenses, politically powerful persons, and foundations that provide underwriting contributions to stations – that may seek to use the station to raise funds for their own discrete interests, or cause NCE stations to be inundated with fundraising requests from local non-profits. To the extent that these commenters

raise concerns that a university, college, or other institutional licensee may apply pressure to its licensed station to engage in third-party fundraising, we note that NCE stations can take steps to preempt unwanted fundraising requests from licensees and other non-profit organizations by, for example, announcing publicly their reasons for not airing routine third-party fundraising drives.

12. Exemption from Third-Party Fundraising Rule for CPB-Funded NCE Stations.

Although we conclude that the public interest will be served by providing NCE stations the flexibility to conduct third-party fundraising, we recognize that some NCE stations claim that this new fundraising latitude may pose challenges for those stations that have no interest in participating in third-party fundraising. The record reflects that most NCE stations that oppose third-party fundraising are CPB-funded stations. Indeed, all but one CPB-funded station that filed comments opposed relaxation of the rule. Accordingly, because CPB-funded stations generally do not want this added flexibility, we are exempting all CPB-funded NCE stations from the new rule authorizing NCE stations to conduct on-air fundraising for third-party non-profit organizations that interrupts regular programming.

**B. Limitations on Eligible Beneficiaries of Third-Party Fundraising**

13. We limit the class of entities for which NCE stations may conduct third-party fundraising to entities that are recognized as tax exempt, non-profit organizations under Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3). Section 501(c)(3) exempts from federal income taxes corporations, foundations, or other organizations that are organized and operated exclusively for religious, charitable, scientific, educational, or certain other purposes, where no part of the net earnings of the organization inures to the benefit of any private shareholder or individual. NRB and other commenters overwhelmingly support limiting eligibility for third-party fundraising to Section 501(c)(3) organizations. We agree with

commenters that this limitation will provide NCE stations certainty that third-party organizations that benefit from on-air fundraising are bona fide non-profits.

14. Two commenters suggest that NCE stations should be allowed to undertake fundraising for any organization that has qualified as a bona fide non-profit organization in any State or pursuant to any section of the Internal Revenue Code relating to non-profit organizations. These commenters assert that not all bona fide non-profit organizations choose to apply to be certified as tax exempt under the Internal Revenue Code and that there are many bona fide non-profit, tax exempt organizations, such as veterans organizations and civic leagues, that are not qualified under Section 501(c)(3), but are covered under other sections of the Internal Revenue Code. We acknowledge that there are many bona fide non-profit organizations that are not qualified as tax exempt, non-profit organizations under Section 501(c)(3). Nevertheless, we conclude that it is appropriate to limit eligibility for third-party fundraising under our rules to Section 501(c)(3) organizations. We think it would be unworkable to have the laws of 50 different States governing the types of non-profit organizations that may be the beneficiaries of third-party fundraising.

15. Moreover, unlike non-profit organizations certified under other sections of the Internal Revenue Code, Section 501(c)(3) organizations are strictly prohibited from supporting or opposing candidates for political office and are subject to limits on lobbying. Thus, limiting eligible beneficiaries to Section 501(c)(3) organizations dovetails well with Section 399B's prohibition on paid political advertising on NCE stations. This prohibition reflects Congress's concern that paid political advertising could alter the unique noncommercial, educational nature of public broadcasting. We are similarly concerned that allowing NCE stations to raise funds for non-profit organizations that support or oppose political candidates or spend a substantial part of

their time engaged in lobbying activities could alter the noncommercial, educational nature of NCE stations. We are also concerned that an NCE station's audience may perceive the station's efforts to raise funds for such an organization as a tacit endorsement of that organization's views, which could alter the public's perception of noncommercial broadcasting. Therefore, we conclude that it is appropriate to limit the eligible beneficiaries of third-party fundraising to Section 501(c)(3) organizations.

16. We will not limit eligible beneficiaries of third-party fundraising to local non-profit organizations. The Commission sought comment in the NPRM on whether it would further localism to limit NCE stations to soliciting donations for local non-profit organizations. After reviewing the comments, however, we are not convinced that localism would benefit significantly from such a limitation. Several commenters point out that there are many national non-profit organizations (some of which have local chapters and some of which do not) that provide critical support to local communities. Educational Media Foundation (EMF) notes, in this regard, that a disaster that directly impacts the audience of an NCE station may be best addressed by a national organization that does not have a local chapter in the community of license. Further, we agree with commenters that it may be difficult to distinguish between "local" and "non-local" organizations where, for example, a non-profit organization has local, national, and international components. Additionally, commenters observe that limiting eligible beneficiaries to local non-profit organizations may ignore the preferences of NCE station audiences. Northwestern College states that it conducted a survey of its listener advisory panels in five of its markets to solicit feedback on how the panel members feel about providing financial aid to less fortunate individuals facing difficult circumstances both at home and abroad. Over 65% of the 1,200 respondents indicated that they want to be informed about the needs of poor

people regardless of where they live, over 44% indicated that they are willing to respond financially to help worthy causes both in the United States and internationally, and 26% indicated that awareness of problems in other countries make them more likely to help those in their own communities. Accordingly, we will afford NCE stations the discretion to raise funds for both local and non-local non-profit organizations. While we are not limiting the beneficiaries of third-party fundraising to local non-profit groups, we note that many NCE stations already have relationships with non-profit groups in their local communities and we expect that NCE stations may be highly motivated to support local non-profits.

17. We also decline to limit eligible beneficiaries of an NCE station's third-party fundraising to non-profit organizations that are unaffiliated with the station. The NPRM asked for comment on whether to limit fundraising on behalf of third parties to unaffiliated third parties, given that third-party fundraising on behalf of affiliated entities may restrict an NCE station's ability to conduct fundraising for local non-profit organizations. As discussed above, we have determined that it will not significantly further localism to limit NCE stations to fundraising for local non-profit organizations. Thus, we think it is unnecessary to limit third-party fundraising to unaffiliated entities to ensure that NCE stations are able to fundraise for local non-profit groups.

### **C. Annual Limit on Third-Party Fundraising**

18. We will allow NCE broadcasters to spend up to one percent of their total annual airtime conducting third-party fundraising. NRB asserts that a one-percent annual limit provides adequate flexibility to NCE stations, explaining that NCE licensees "will be reluctant to frustrate their audiences with excessive or demanding appeals for third-party non-profits, particularly when their own stations rely on donations from their [audiences] in order to operate." We agree

with NRB and other commenters that a one-percent annual limit will strike an appropriate balance between allowing NCE stations the flexibility to support the fundraising efforts of third-party non-profit organizations and ensuring that third-party fundraising does not undermine the noncommercial nature of the participating stations and divert them from their primary function of providing educational programming to their communities of license. A one-percent annual limit – which equates to approximately 88 hours annually or 1.7 hours weekly for stations on the air 24 hours a day – will afford NCE stations flexibility to conduct third-party fundraising, while also ensuring that NCE stations do not frustrate their audiences with excessive fundraising appeals or divert stations from primary mission of providing educational programming to their communities. We reject proposals that we adopt a ten-percent annual limit on third-party fundraising, or leave it entirely up to NCE stations to decide how much of their airtime to devote to third-party fundraising. We share NPR’s concern that a ten-percent annual limit would represent a significant portion of a station’s annual program schedule and could further erode the distinction between NCE stations and their commercial counterparts.

19. We recognize that an NCE station’s total annual airtime may vary slightly from year to year and that it may be difficult for some stations to determine in advance precisely how many hours they will operate in a given year. Therefore, as suggested by NRB, we will allow NCE stations that engage in third-party fundraising to use the prior year’s total airtime for purposes of determining how many hours constitute one percent of their total annual airtime. For example, an NCE station that wishes to devote one percent of its airtime in 2017 to third-party fundraising may use its total annual airtime for 2016 in calculating the one percent cap. Furthermore, with respect to NCE stations that multicast programming on two or more separate channels, we will apply the one-percent annual limit separately to each individual programming

stream. Thus, an NCE station with three programming streams may spend up to one percent of the total annual airtime of each stream airing third-party fundraising programming on that stream. We will not, however, allow NCE stations with multiple programming streams to aggregate their total hours of programming from all of their streams and allocate their fundraising activity between and among streams or on a single program stream at their discretion, as proposed by one commenter. As discussed above, we believe that the one-percent annual limit is important to ensuring that third-party fundraising activities do not undermine the noncommercial character of NCE stations, and including more fundraising on a particular stream would undermine that goal.

20. We will retain our long-standing waiver process to permit NCE stations to conduct time-limited on-air fundraising for specific disasters and other singular catastrophic events, such as hurricanes and tornadoes, as suggested by commenters. Since such events occur only rarely, it will not burden Commission staff to retain the existing waiver process for such events for all NCE stations, both exempt and non-exempt. This will enable CPB-funded stations that are exempt from the new rule to conduct third-party fundraising for disaster relief efforts by seeking a waiver as they have done in the past. Non-exempt stations may use the same long-standing process if they wish to conduct third-party fundraising beyond their one-percent annual limit, but the standard will remain the same. This approach will ensure that if a disaster occurs after a non-exempt station reaches its one-percent annual limit, the station would still be able to seek a waiver to raise funds on-air to support these efforts.

21. We decline to adopt any general limits on the duration of a specific fundraising program or on a discrete fundraising effort. We think it is unlikely that NCE licensees will risk alienating their audiences by interrupting their regular programming for an extended duration to

conduct third-party fundraising. Thus, we find it is unnecessary to adopt durational limits on such fundraising programs.

#### **D. Audience Disclosures**

22. We require NCE stations that interrupt regular programming to conduct third-party fundraising to air audience disclosures that clearly state that the fundraiser is not for the benefit of the station itself and identify the non-profit organization intended to benefit from the fundraising. Most commenters that address this issue support an audience disclosure requirement, acknowledging that it will decrease the likelihood of confusion on the part of station audiences as to whether the fundraising is intended to benefit the station or another entity and as to the identity of the entity for which the fundraising is being conducted. Commenters offer a range of suggestions as to the details and frequency of the audience disclosures. We adopt NRB's proposed approach and require that NCE stations make disclosures at the beginning and the end of the fundraising program and at least once during each hour of the program. We will not require NCE stations to use any particular language in the disclosure, but the disclosure must clearly state that the fundraiser is not for the benefit of the station itself and specifically identify the non-profit organization for which the fundraising is being conducted. As NRB suggests, an NCE station may include more detailed information – such as a description of the non-profit entity and any special project or purpose for which the funds are being raised – on the station's website and invite the audience to access that information.

23. One commenter opposes the audience disclosure requirement, arguing that it “would seem obvious that any appeal for funds . . . will reveal the identity of the party soliciting the donation.” We disagree. Given that NCE stations frequently conduct fundraising to support their own operations and programming, we believe that audience confusion could arise,



particularly where there is an affiliation between an NCE station and the non-profit organization for which the fundraising is being conducted. Accordingly, we conclude that an audience disclosure requirement is warranted to ensure that the beneficiary of the fundraising is clearly identified and avoid the potential for audience confusion. We further find that this audience disclosure requirement will not impose a significant burden on NCE stations as it simply requires a statement that the fundraising is not for the stations and identification of the organization that will receive the funds.

**E. Reimbursement of Expenses**

24. We allow NCE stations to accept reimbursement of expenses incurred in conducting third-party fundraising activities or airing third-party fundraising programs. Expenses for which reimbursement may be accepted include expenses incurred by an NCE station in producing third-party programming and the station's operating costs in connection with the broadcast of third-party fundraising programming. This is consistent with Section 399B(b)(1) of the Act, 47 U.S.C. 399B(b)(1), which allows "public broadcast station[s] . . . to engage in the offering of services, facilities, or products in exchange for remuneration," except that such stations may not make their facilities available for the broadcast of any advertisements. We decline, however, to allow NCE stations to receive "additional consideration" in exchange for conducting or airing third-party fundraising programs. Allowing NCE stations to receive additional consideration for third-party fundraising activities could create the perception that NCE stations are engaging in commercial activity and airing programming akin to advertising, thus undermining their noncommercial, educational mission. It also could mislead fundraising contributors, who might assume that their donations are being used exclusively to advance the mission of the fundraiser. Finally, as acknowledged by NRB, our rules permit an NCE station to

broadcast programming furnished by third parties only “if no other consideration than the furnishing of the program and the costs incidental to its production and broadcast are received by the licensee.” We decline NRB’s request to create a distinction between “regular ‘programming’” and “special fundraising activities by NCE stations for a third-party non-profit group,” with the latter not subject to the prohibition on receiving additional consideration. We find that the policy rationale for prohibiting additional consideration in the case of regular programming, i.e., that such consideration could undermine the noncommercial, educational character of public broadcast stations, applies equally to third party fundraising activities and programs.

**F. Public File Requirement and Other Matters**

25. We do not require NCE stations that participate in third-party fundraising that interrupts regular programming to submit reports to the Commission detailing their fundraising activities, but will instead require such stations to include appropriate information on their fundraising activities in their public inspection files. Specifically, we require NCE stations that conduct third-party fundraising to place in their public files, on a quarterly basis, the following information for each third-party fundraising program or activity: the date, time, and duration of the fundraiser; the type of fundraising activity; the name of the non-profit organization benefitted by the fundraiser; a brief description of the specific cause or project, if any, supported by the fundraiser; and, to the extent that the NCE station participated in tallying or receiving any funds for the non-profit group, an approximation of the total funds raised. NCE stations that do not conduct any third-party fundraising in a given quarter will not be required to include any fundraising information in their public file for that quarter. A number of commenters raised concerns that a reporting requirement would impose unnecessary burdens on NCE licensees.

NRB and other commenters support a public file requirement. We conclude that the more modest approach we adopt here will provide transparency regarding NCE stations' third-party fundraising activities to the stations' audiences, while minimizing any burdens on NCE stations. We also conclude that it is unnecessary to require NCE licensees to certify compliance with the annual limit and other restrictions on third-party fundraising in their license renewal applications.

26. Additionally, we do not require NCE stations to locally produce all third-party fundraising programs and conduct all third-party fundraising activities themselves, including collecting and distributing the funds to the non-profit entity. We agree with commenters who argue that requiring NCE stations to locally produce third-party fundraising programs may be unnecessarily burdensome and inefficient. Further, we are not convinced that requiring local production of third-party fundraising activities is necessary to promote localism. As EMF points out, fundraising is not inherently local, but instead can have a regional, national, or worldwide message and still serve the needs of local communities. We also note that NCE stations are permitted under the Commission's rules to air programming that is not locally produced. Indeed, the Commission has consistently found that non-locally produced programming can serve the needs of a community. Moreover, we are unpersuaded by NPR's argument that allowing outside entities to independently produce fundraising appeals and handle the collection of funds could "fuel the perception that the station lacks editorial independence and that its airtime is being leased to the highest bidder." As noted above, NCE stations are already permitted to air non-locally produced programming, and NPR does not suggest that the broadcast of such programming has created a perception that NCE stations lack editorial independence. We do not believe that allowing NCE stations to use up to one percent of their total annual airtime for non-locally produced third-party fundraising will cause the public to lose confidence in the stations'

editorial independence.

27. Finally, we will not require NCE stations that want to participate in third-party fundraising to affirmatively “opt in” by filing a letter or notification with the Commission. We conclude that there would be little benefit to non-profit organizations from opt-in notifications, as such organizations are more likely to seek out fundraising partners based on existing relationships with NCE stations than by perusing notifications filed with the Commission.

#### **IV. PROCEDURAL MATTERS**

##### **A. Final Regulatory Flexibility Act Analysis**

28. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the Notice of Proposed Rulemaking (NPRM) released in April 2012 in this proceeding. The Federal Communications Commission (Commission) sought written public comment on the proposals in the NPRM, including comment on the IRFA. The Commission received no comments on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

##### **B. Need for, and Objectives of, the Report and Order**

29. Pursuant to §§ 73.503(d) and 73.621(e) of the Commission’s rules, a noncommercial educational (NCE) broadcast station may not conduct fundraising activities that substantially alter or suspend regular programming and are designed to benefit any entity other than the station itself. “Regular programming” includes programming that “the public broadcaster ordinarily carries, but does not encompass those fundraising activities that suspend or alter their normal programming fare.” The third-party fundraising restrictions reflect the concern that “educational stations are licensed to provide a noncommercial broadcast service, not to serve as a fund-raising operation for other entities by broadcasting material that is ‘akin to

regular advertising.’’ The NPRM sought comment on whether and under what circumstances to NCE stations should be allowed to conduct on-air fundraising activities that interrupt regular programming for the benefit of charities and other third-party non-profit organizations.

30. The Report and Order revises the rules to allow NCE stations to conduct limited on-air fundraising activities that interrupt regular programming for the benefit of third-party non-profit organizations. The Report and Order finds that relaxing the longstanding third-party fundraising restrictions will serve the public interest by enabling NCE stations to partner with charities and other non-profit organizations to raise funds for worthy causes. Third-party fundraising programs will also help to raise public awareness about important topics, such as poverty, health care, and humanitarian issues. The Report and Order concludes that permitting NCE stations to conduct limited third-party fundraising will not undermine the noncommercial nature of NCE stations or their primary function of serving their communities of license through educational programming.

31. The rules adopted in the Report and Order are intended to provide NCE stations the flexibility to conduct limited third-party fundraising, while minimizing any impact on the noncommercial broadcasting service. Specifically, these rules:

- Authorize NCE stations to conduct third-party fundraising that interrupts regular programming;
- Include an exemption from the rule authorizing NCE stations to conduct third-party fundraising which provides that no NCE station that receives funding from the Corporation for Public Broadcasting (CPB) shall have the authority to conduct third-party fundraising;

- Limit the non-profit organizations that are eligible beneficiaries of third-party fundraising to entities that are recognized as tax exempt, non-profit organizations under Section 501(c)(3) of the Internal Revenue Code;
- Authorize NCE stations to spend up to one percent of their total annual airtime conducting third-party fundraising;
- Require NCE stations that conduct third-party fundraising to air audience disclosures, at the beginning and ending of the fundraising programming and at least once during each hour of the program, that clearly state that the fundraiser is not for the benefit of the station itself and specifically identify the non-profit organization that is the intended beneficiary of the fundraising;
- Authorize NCE stations to accept reimbursement of expenses incurred in conducting third-party fundraising activities or airing third-party fundraising programs, but prohibit NCE stations from receiving “additional consideration” in exchange for conducting or airing third-party fundraising programs; and
- Require NCE stations that conduct third-party fundraising to include certain information relating to their fundraising activities in their public files.

#### Summary of Significant Issues Raised in Response to the IRFA.

32. No comments were filed in response to the IRFA. One commenter raised concerns that the reporting requirements proposed in the NPRM could impose unnecessary burdens on small NCE licensees.

Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

33. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

#### Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

34. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted herein. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

35. Television Broadcasting. This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.” These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts.

The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of \$25,000,000 or less, 25 had annual receipts between \$25,000,000 and \$49,999,999 and 70 had annual receipts of \$50,000,000 or more. Based on this data, we therefore estimate that the majority of television broadcasters are small entities under the applicable SBA size standard.

36. The Commission has estimated the number of licensed commercial television stations to be 1,384. Of this total, 1,264 stations (or about 91 percent) had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on February 24, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed NCE television stations to be 394. Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

37. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations must be included. Our estimate, therefore likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive.



38. Radio Stations. This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.” The SBA has established a small business size standard for this category as firms having \$38.5 million or less in annual receipts. Economic Census data for 2012 shows that 2,849 radio station firms operated during that year. Of that number, 2,806 operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 million and 26 with annual receipts of \$50 million or more. Therefore, based on the SBA’s size standard the majority of such entities are small entities.

39. According to Commission staff review of the BIA Publications, Inc. Master Access Radio Analyzer Database as of June 2, 2016, about 11,386 (or about 99.9 percent) of 11,395 commercial radio stations had revenues of \$38.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed commercial radio stations to be 11,415. We note that the Commission has also estimated the number of licensed NCE radio stations to be 4,101. Nevertheless, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. We also note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The Commission’s estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

40. In addition, to be determined a “small business,” an entity may not be dominant in its field of operation. We further note, that it is difficult at times to assess these criteria in the

context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these basis, thus our estimate of small businesses may therefore be over-inclusive.

41. Small Entities, Small Organizations, Small Governmental Jurisdictions. Our proposed actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein. As of 2014, according to the SBA, there were 28.2 million small businesses in the U.S., which represented 99.7% of all businesses in the United States. Additionally, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of 2007, there were approximately 1,621,215 small organizations. Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” Census Bureau data for 2012 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,761 entities may qualify as “small governmental jurisdictions.” Thus, we estimate that most governmental jurisdictions are small.

**C. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

42. The Report and Order requires NCE stations that choose to conduct third-party fundraising to include certain information concerning their fundraising activities in the public files. Specifically, NCE stations that conduct third-party fundraising must place in their public files, on a quarterly basis, the following information for each third-party fundraising program or activity: the date, time, and duration of the fundraiser; the type of fundraising activity; the name

of the non-profit organization benefitted by the fundraiser; a brief description of the specific cause or project, if any, supported by the fundraiser; and, to the extent that the NCE station participated in tallying or receiving any funds for the non-profit group, an approximation of the total funds raised.

**D. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered**

43. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.”

44. The NPRM in this proceeding sought comment on whether to require NCE stations that conduct third-party fundraising to file annual reports on their fundraising activities and to require NCE stations to place these reports in their public files. In order to address the concerns that reporting would place unnecessary burdens on small NCE licensees and to minimize burdens on NCE stations, the Report and Order declines to adopt the reporting requirement and instead simply requires NCE stations that conduct third-party fundraising to place certain information concerning their fundraising activities in their public files on a quarterly basis and only if there was fund-raising activity for that quarter. Additionally, the Report and Order adopts an exemption from the rule authorizing NCE stations to conduct third-party fundraising which provides that no NCE station that receives CPB funding shall have the

authority to conduct third-party fundraising. This exemption is intended to ease the potential burdens that the revised rules may place on CPB-funded NCE stations, the majority of which are opposed to revision of the rules to allow third-party fundraising.

**E. Report to Congress**

45. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. The Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.

**F. Paperwork Reduction Act of 1995 Analysis**

46. This Report and Order contains either new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). It will be submitted to the OMB for review under Section 3507(d) of the PRA. The OMB, the general public, and other federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding.

**G. Additional Information**

47. For additional information on this proceeding, contact Kathy Berthot, Kathy.Berthot@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2120.

**V. ORDERING CLAUSES**

48. Accordingly, IT IS ORDERED, pursuant to the authority contained in Sections 1, 4(i), 303(r), and 399B of the Communications Act of 1934, as amended, 47 U.S.C 151, 154(i), 303(r), and 399B, that this Report and Order IS ADOPTED. The requirements of this Report and Order shall become effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION

**IN THE FEDERAL REGISTER]** , except for §§ 73.503(e)(1), 73.621(f)(1), and 73.2527(e)(14), which contain new or modified information collection requirements that require approval by the OMB under the Paperwork Reduction Act and will become effective after the Commission publishes a document in the Federal Register announcing such approval and the relevant effective date.

49. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order including the Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 73

Radio, Reporting and recordkeeping requirements, Television.

FEDERAL COMMUNICATIONS COMMISSION.

Marlene H. Dortch,  
Secretary.

## Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

### **PART 73 – RADIO BROADCAST SERVICES**

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

2. Section 73.503 is amended by revising the last sentence of paragraph (d), redesignating paragraph (e) as (f), adding new paragraph (e), and revising the Note to § 73.503 to read as follows:

#### **§ 73.503 Licensing requirements and service.**

\* \* \* \* \*

(d) \* \* \* The scheduling of any announcements and acknowledgements may not interrupt regular programming, except as permitted under paragraph (e) of this section.

(e) A noncommercial educational FM broadcast station may interrupt regular programming to conduct fundraising activities on behalf of a third-party non-profit organization, provided that all such fundraising activities conducted during any given year do not exceed one percent of the station's total annual airtime. A station may use the prior year's total airtime for purposes of determining how many hours constitute one percent of its total annual airtime. With respect to stations that multicast programming on two or more separate channels, the one-percent annual limit will apply separately to each individual programming stream. For purposes of this paragraph, a non-profit organization is an entity that qualifies as a non-profit organization under 26 U.S.C. 501(c)(3).

(1) Audience disclosure. A noncommercial educational FM broadcast station that interrupts regular programming to conduct fundraising activities on behalf of a third-party non-profit organization must air a disclosure during such activities clearly stating that the fundraiser is not for the benefit of the station itself and identifying the entity for which it is fundraising. The station must air the audience disclosure at the beginning and the end of each fundraising program and at least once during each hour in which the program is on the air.

(2) Reimbursement. A noncommercial educational FM broadcast station that interrupts regular programming to conduct fundraising activities on behalf of a third-party non-profit organization may accept reimbursement of expenses incurred in conducting third-party fundraising activities or airing third-party fundraising programs.

(3) Exemption. No noncommercial educational FM broadcast station that receives funding from the Corporation for Public Broadcasting shall have the authority to interrupt regular programming to conduct fundraising activities on behalf of a third-party non-profit organization.

\* \* \* \* \*

Note to § 73.503: Commission interpretation on this rule, including the acceptable form of acknowledgements, may be found in the Second Report and Order in Docket No. 21136 (Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations), 86 FCC 2d 141 (1981); the Memorandum Opinion and Order in Docket No. 21136, 90 FCC 2d 895 (1982); the Memorandum Opinion and Order in Docket 21136, 97 FCC 2d 255 (1984); and the Report and Order in Docket No. 12-106 (Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations), FCC 17-41, April 20, 2017. See also Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations, Public Notice,

7 FCC Rcd 827 (1992), which can be retrieved through the Internet at

<http://www.fcc.gov/mmb/asd/nature.html>.

3. Section 73.621 is amended by revising the last sentence of paragraph (e) introductory text and the Note to paragraph (e), redesignating paragraphs (f) through (i) as paragraphs (g) through (j), and adding new paragraph (f) to read as follows:

**§ 73.621 Noncommercial educational TV stations.**

\* \* \* \* \*

(e) \* \* \* The scheduling of any announcements and acknowledgements may not interrupt regular programming, except as permitted under paragraph (f) of this section.

Note to paragraph (e): Commission interpretation of this rule, including the acceptable form of acknowledgements, may be found in the Second Report and Order in Docket No. 21136 (Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations), 86 F.C.C. 2d 141 (1981); the Memorandum Opinion and Order in Docket No. 21136, 90 FCC 2d 895 (1982); the Memorandum Opinion and Order in Docket 21136, 49 FR 13534, April 5, 1984; and the Report and Order in Docket No. 12-106 (Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations), FCC 17-41, April 20, 2017.

(f) A noncommercial educational television station may interrupt regular programming to conduct fundraising activities on behalf of a third-party non-profit organization, provided that all such fundraising activities conducted during any given year do not exceed one percent of the station's total annual airtime. A station may use the prior year's total airtime for purposes of determining how many hours constitute one percent of its total annual airtime. With respect to stations that multicast programming on two or more separate channels, the one-percent annual limit will apply separately to each individual programming stream. For purposes of this



paragraph, a non-profit organization is an entity that qualifies as a non-profit organization under 26 U.S.C. 501(c)(3).

(1) Audience disclosure. A noncommercial educational television station that interrupts regular programming to conduct fundraising activities on behalf of a third-party non-profit organization must air a disclosure during such activities clearly stating that the fundraiser is not for the benefit of the station itself and identifying the entity for which it is fundraising. The station must air the audience disclosure at the beginning and the end of each fundraising program and at least once during each hour in which the program is on the air.

(2) Reimbursement. A noncommercial educational television station that interrupts regular programming to conduct fundraising activities on behalf of a third-party non-profit organization may accept reimbursement of expenses incurred in conducting third-party fundraising activities or airing third-party fundraising programs.

(3) Exemption. No noncommercial educational television station that receives funding from the Corporation for Public Broadcasting shall have the authority to interrupt regular programming to conduct fundraising activities on behalf of a third-party non-profit organization.

\* \* \* \* \*

4. Section 73.3527 is amended by adding paragraph (e)(14) to read as follows:

**§ 73.3527 Local public inspection file of noncommercial educational stations.**

\* \* \* \* \*

(e) \* \* \*

(14) Information on Third-Party Fundraising. For noncommercial educational broadcast stations that interrupt regular programming to conduct fundraising activities on behalf of a

third-party non-profit organization pursuant to § 73.503(e) (FM stations) or § 73.621(f) (television stations), every three months, the following information for each third-party fundraising program or activity: the date, time, and duration of the fundraiser; the type of fundraising activity; the name of the non-profit organization benefitted by the fundraiser; a brief description of the specific cause or project, if any, supported by the fundraiser; and, to the extent that the station participated in tallying or receiving any funds for the non-profit group, an approximation of the total funds raised. The information for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October-December, April 10 for the quarter January-March, etc.).

\* \* \* \* \*

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